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NO. 02-1537

Supreme Court, U.S.
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In The

Supreme Court of the United States

TOWNER LEEPER & LAFONNE LEEPER,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

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7 pp

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TABLE OF AUTHORITIES

Cases

Affiliated UTE Citizens v. U.S.,
406 U.S. 128,155 (1972) 2

Randall V. Loftgaarden,
478 U.S. 647,661 (1986) 2

Kabakjian v. U.S.,
267 F. 3d 208 (3d cir. 2001) 3,4

Statutes

26 U.S.C. §6335(b) 1

26 U.S.C. §7433 2

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ARGUMENT

Respondent's brief is noteworthy not for what is says, but what it doesn't say.

As we go through Respondent's brief, please note that Respondent does not dispute that the due process requirements of notice in 26 USC 6335(b) were recklessly and willfully denied Petitioner Lafonne Leeper. This is a critical admission as Respondent's

objections are made with unclean hands. With this in mind, we now turn to Respondent's brief directly:

1. Damages

In section one, Respondent properly states a taxpayer may recover actual, direct economicdamages, quoting from the statute. In making that determination, one would normaily look to the plain language of the statute, the legislative history of the statute, and the case law addressing the statute.

However, Respondent instead refers us to Affiliated UTE Citizens v. U.S., 406 US 128,155 (1972) and Randall v. Loftsgaarden, 478 US 647, 661 (1986) for a "general principle" that economic damages should be the excess of what the taxpayers would have received at the tax sale if given notice over what was actually received at that sale.

Of course this is nonsense.

First, the cases cited are not interpretive of 26 USC 7433. Affiliated involved damages under the Securities Exchange Act of 1934 for fraudulent conduct by the payor. 26 USC 7433 was not enacted until 1988, fully 16 years after the court's ruling and 54 years after the Securities Act of 1934. Randall involved the same securities act.

Further, the holdings of the case are NOT as proposed by Respondent. In Affiliated the court determined damages to be the difference between the value of property at the time of the sale and what was actually received. This court addressed numerous fair market valuation factors in making that determination. However, Respondent argues this court should find the damages to be the difference between the value of the property the taxpayers would have received at the tax

auction sale had Petitioner Lafonne Leeper received notice less what they did receive. No one can reasonably argue the IRS's minimum bid valuation in a tax case is any indication of fair market value. In this case, there is no better evidence of value than that cited in Respondent's brief. The buyer at the auction sale paid $40,022 and within 2 months had resold the same property for $200,000. The damages are known.

Finally, Petitioners submit the legislative history of 26 USC 7433 clearly reflects Congress's interest in protecting the taxpayer's equity from reckless and willful acts of IRS collection agents. That original intention in1988 has increased and now resulted in a series of new laws designed to protect taxpayers rights as clearly reflected in the committee reports recited in Petitioner's original petition. That is where the focus of this case belongs.

2. Conflict of Authority

The rest of Respondent's brief lauds Kabakjian v United States, 267 F.3d 208 (3d cir. 2001) as direct support for Respondent's case.

Again, Petitioner must challenge the veracity of Respondent's interpretation in that case. Kabakjian involved a tax protestor who received actual notice by certified mail rather than personal delivery. The 4th circuit did not find this clerical error in method of service to be a willful or reckless disregard under 7433. Rather, it was found to be substantial compliance. Further, the taxpayer's property was sold for more than 80 percent of the market value, a disparity the court found too small "to shock the conscience".

In the present case, the Respondent does not dispute the Petitioner Lafonne Leeper received no notice from the IRS, that failure to give her notice was reckless

and intentional, and that as a result her property was resold immediately thereafter for 5 times the tax sale price. Those circumstances shock anyone's conscience.

Petitioner's would submit that the facts of Kabakjian are far different than the facts of this case, and the ruling of the court adding the factor concerning a shocking loss of value actually supports Petitioner's claim for damages. This case further reflects the disparity of treatment of yet another court of appeals.

2. Conclusion

Petitioner's respectfully submit the IRS has unclean hands, a callous disregard for the damage inflicted by the reckless and intentional acts of its agent and a lack of respect for the profound importance of a taxpayer's constitutional rights.

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